

# HOUSE BILL REPORT

## ESSB 5891

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### As Reported by House Committee On: Ways & Means

**Title:** An act relating to criminal justice cost savings.

**Brief Description:** Addressing criminal justice cost savings.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senator Murray).

**Brief History:**

**Committee Activity:**

Ways & Means: 5/20/11 [DP].

#### Brief Summary of Engrossed Substitute Bill

- Eliminates tolling of community custody while an offender is confined for violating a sentencing condition.
- Eliminates supervision by the Department of Corrections (DOC) for certain misdemeanor offenders and low and moderate risk felony jail offenders, and adds supervision for certain domestic violence offenders.
- Reduces the maximum terms of community custody for offenders sentenced under the First-Time Offender Waiver.
- Permits the DOC to collect a one-time supervision intake fee of \$400 to \$600 instead of a monthly assessment for offender supervision.
- Transfers the Indeterminate Sentencing Review Board to the DOC.
- Requires the Caseload Forecast Council to serve as a clearinghouse and information center on adult and juvenile sentencing and data collection.
- Requires the DOC to serve as the State Council for the Interstate Compact on Adult Offender Supervision.

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### HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass. Signed by 15 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle, Cody, Dickerson, Haigh, Hudgins, Hunt, Kagi, Kenney, Ormsby, Seaquist, Springer and Sullivan.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 10 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Parker, Ross, Schmick and Wilcox.

**Staff:** Alexa Silver (786-7190), Yvonne Walker (786-7841), and Alex MacBain (786-7288).

**Background:**

Offender Supervision.

*Tolling.* A felony offender's term of community custody is tolled (or paused) during any period of time the offender is in confinement for any reason. If the confinement is for violation of a condition of community custody, and the offender is found not to have committed the violation, the time spent in confinement does not toll the term of community custody. In addition, a term of confinement or community custody is tolled during any period of time the offender is absent without prior approval. A term of partial confinement is tolled during any period of time the offender is in total confinement either for a new conviction or for violating a condition of a separate felony sentence.

*Supervision of Felony and Non-Felony Offenders.* The Department of Corrections (DOC) supervises felony offenders who are sentenced to community custody who have a high risk of re-offense. The DOC also supervises certain categories of felony offenders regardless of risk classification, including offenders whose current conviction is for a serious violent offense, a sex offense, or felony Failure to Register as a sex offender. The DOC supervises low and moderate risk felony sex offenders who receive a sentence of one year or less, which may include the following offenses: Child Molestation in the third degree; Commercial Sexual Abuse of a Minor (and Promoting Travel); felony Communication with a Minor for Immoral Purposes; Criminal Trespass Against Children; Custodial Sexual Misconduct in the first degree; felony Failure to Register as a Sex Offender; Incest in the second degree; Kidnapping in the second degree with sexual motivation; Rape in the third degree; Sexual Misconduct with a Minor in the first degree; Sexually Violating Human Remains; and Voyeurism.

The DOC supervises offenders convicted of certain misdemeanors and gross misdemeanors who are sentenced to probation. Courts are required to order probation for offenders convicted of the following offenses:

- Sexual Misconduct with a Minor in the second degree;
- Custodial Sexual Misconduct in the second degree;
- Communication with a Minor for Immoral Purposes;
- non-felony Failure to Register as a Sex Offender; and
- Assault in the fourth degree or violation of a domestic violence (DV) court order where the offender has a prior conviction for a violent offense, a sex offense, a crime against a person, Assault in the fourth degree, or violation of a DV court order.

"Domestic violence" is defined by statute to mean certain crimes when committed by one family or household member against another. "Repetitive domestic violence offense" is defined to mean non-felony Assault, Harassment, Stalking, and violation of no-contact and protection orders.

For misdemeanor offenders sentenced to probation, the DOC is initially responsible for providing supervision. A county may assume responsibility by entering into a contract with the DOC. Minimum requirements for the contracts, including provisions regarding funding, are specified in statute.

*First-Time Offender Waiver.* The First-Time Offender Waiver (FTOW) sentencing alternative permits a court to waive a standard range sentence and instead impose up to 90 days of confinement. As part of the FTOW, the court may impose community custody up to one year. If treatment is ordered, the court may impose community custody up to the period of treatment, with a maximum of two years.

#### Cost of Supervision.

*Assessments for Supervision of Felony Offenders.* The DOC may impose a monthly supervision assessment on a felony offender under supervision, which is considered payment toward providing supervision. The assessment is \$15 per month for routine parole and up to \$50 per month for intensive parole supervision. The assessment is imposed for the duration of supervision and is deposited in the Cost of Supervision Fund. Expenditures from the Cost of Supervision Fund are made for supporting the collection of legal financial obligations.

The DOC may exempt an offender from payment of all or part of the assessment if: the offender has diligently attempted but has been unable to obtain employment; the offender is a student; the offender has an employment handicap; the offender's age prevents employment; the assessment would create an undue hardship because the offender is responsible for supporting dependents; or other extenuating circumstances exist.

*Assessments for Supervision of Misdemeanant Probationers.* When an offender convicted of a misdemeanor or gross misdemeanor is placed on probation and supervised by either the DOC or a county probation department, the DOC or the probation department may collect a monthly assessment up to \$100 per month from the offender.

*Application for Interstate Transfer.* The DOC processes applications for transfer of offenders under the Interstate Compact for Adult Offender Supervision and may charge offenders a reasonable fee for processing the application.

#### Indeterminate Sentence Review Board.

Prior to 1984 Washington operated under an indeterminate sentencing scheme. In 1981 the Legislature enacted the Sentencing Reform Act (SRA) which took effect in 1984 and changed Washington's sentencing structure from an indeterminate to a determinate sentencing scheme. Under the indeterminate scheme, the Board of Prison Terms and Paroles had jurisdiction over offenders sentenced for felony crimes committed prior to 1984 and would decide when the offender would be paroled and under what circumstances the offender's parole could be revoked.

In 1986 the Board of Prison Terms and Paroles was redesignated the Indeterminate Sentence Review Board (ISRB). The ISRB assumed the responsibility of supervision, parole, and revocation for persons sentenced for felony offenses prior to July 1, 1984, the effective date of the SRA.

In 2001 legislation was enacted that created a type of sentencing known as "determinate plus" sentencing for a select group of sex offenders. The ISRB was also given responsibility and jurisdiction over these offenders. Under determinate plus sentencing, the court sentences the offender to a minimum term and a maximum term. The ISRB is responsible for evaluating the offender prior to the expiration of the minimum term. If the evaluation does not result in the release of the offender, the ISRB must re-evaluate the sex offender at least once every two years, up to the offender's maximum term.

The ISRB is composed of the chair and four members, all appointed by the Governor.

#### Sentencing Guidelines Commission.

The Sentencing Guidelines Commission (SGC) is a state agency created by the Legislature in 1981 as part of the SRA. The SGC serves as an independent body to develop criminal sentencing guidelines and standards for recommendation to the Legislature. Responsibilities of the SGC include:

- serving as a clearinghouse and information center on adult and juvenile sentencing;
- conducting ongoing research on sentencing and related issues; and
- evaluating state sentencing policies with the goal of achieving consistencies between sentencing ranges and standards for the multitude of offenses defined in state law.

The SGC consists of 20 voting members, 16 of whom are appointed by the Governor. The appointed members include four superior court judges, two defense attorneys, two prosecutors, four citizens, the chief of a local law enforcement agency, one county elected official, one city elected official, and one administrator of juvenile court services. There are four ex-officio voting members: the Secretary of the DOC, the Director of the Office of Financial Management, the Chair of the ISRB, and the head of the state agency (or his or her designee) having responsibility for juvenile corrections programs. Four legislators are appointed by the leadership of the House of Representatives and the Senate and serve as nonvoting members.

The SGC is authorized to appoint research staff to accomplish the duties of the SGC. In addition, the SGC may appoint a full-time executive officer whose salary is fixed by the Governor.

*Interstate Compact for Adult Offender Supervision.* The Interstate Compact provides a formal means for controlling the interstate movement of offenders who are under the supervision of a member state's department of corrections. All 50 states plus Puerto Rico, the U. S. Virgin Islands, and the District of Columbia are members of the Interstate Compact.

The Interstate Compact created the Interstate Commission, which establishes uniform procedures to manage the movement between states of adults under supervision. The Interstate Compact requires each state to have a compact administrator and to create a State Council for Interstate Adult Supervision (State Council), consisting of representatives of the three branches of government, crime victims, and compact administrators. The State Council appoints the compact administrator and oversees administration of the compact in its own state. The SGC serves as the State Council in Washington.

*Sex Offender Policy Board.* In 2008 the Legislature created the Sex Offender Policy Board (SOPB). The SOPB is responsible for:

- staying apprised of research and best practices related to risk assessment, treatment, and supervision of sex offenders, community education regarding sex offenses and offenders, prevention of sex offenses, and sex offender management in general;
- conducting case reviews on sex offenses as needed to understand the performance of sex offender prevention to response systems or are requested by the Governor, the Legislature, or law enforcement;
- developing and reporting on benchmarks that measure performance across the state's sex offender response system;
- assessing and communicating best practices or trends in other jurisdictions to assess their applicability in Washington; and
- providing a forum for discussion of issues that require interagency communication, coordination, and collaboration.

*Caseload Forecast Council.* The Caseload Forecast Council (Council) is responsible for developing forecasts for the changing caseloads in state entitlement programs and estimating the number of those individuals requiring the services of public assistance programs, state correctional institutions, state correctional non-institutional supervision, state institutions for juvenile offenders, the common school system, long-term care, medical assistance, foster care, and adoption support. The Council consists of six individuals, two appointed by the Governor and four appointed by the Senate and the House of Representatives. Caseload forecasts formally adopted by the Council, along with any unofficial forecasts, are submitted to the Governor and the members of the fiscal committees of the Legislature to facilitate budget development.

#### Miscellaneous.

A felony sentence of more than one year is served in state prison, while a felony sentence of not more than one year is served in jail. Substitute Senate Bill 5168 (SSB 5168), enacted during the 2011 Regular Session, reduced misdemeanor sentences by one day. The bill also provided that a felony sentence of one year or more (rather than more than one year) must be served in state prison.

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#### **Summary of Bill:**

##### Offender Supervision.

*Tolling.* "Tolling" is defined to mean the period of time in which confinement or community custody is paused and for which the offender does not receive credit toward the term ordered.

For offenders other than sex offenders, a term of community custody is not tolled while an offender is confined for violating a sentencing condition unless the remaining or original sentence is imposed. Community custody is not tolled while an offender is ordered to inpatient treatment in lieu of jail time. A term of partial confinement is not tolled while an offender is in total confinement for violating a condition of a sentence for a separate felony conviction.

*Supervision of Felony Offenders.* Supervision is eliminated for felony sex offenders who receive a sentence of one year or less if their risk assessment indicates they have a low or moderate risk of re-offense.

Regardless of risk level classification, the DOC must supervise offenders who have: (1) a current conviction for a felony DV offense if DV was plead and proven after August 1, 2011; *and* (2) a prior conviction for a felony or repetitive DV offense if DV was plead and proven after August 1, 2011.

*Supervision of Non-Felony Offenders.* The DOC must provide up to one year of supervision for offenders sentenced to probation who have: (1) a current conviction for a repetitive DV offense if DV was plead and proven after August 1, 2011; *and* (2) a prior conviction for a felony or repetitive DV offense if DV was plead and proven after August 1, 2011.

The requirement that the DOC supervise most misdemeanor offenders is eliminated. However, until August 1, 2014, the DOC must continue to supervise offenders who: (1) are convicted prior to August 2, 2011, of Assault in the fourth degree or violation of a DV court order; *and* (2) have a prior conviction for a violent offense, a sex offense, a crime against a person, Assault in the fourth degree, or violation of a DV court order.

A county may assume responsibility for supervision of misdemeanor probationers. For the county to assume responsibility for misdemeanor probationers supervised by the DOC, the county and the DOC must enter into a contract. Provisions regarding the contents of the contract are eliminated.

*First-Time Offender Waiver.* Maximum terms of community custody under the FTOW are reduced to six months, or 12 months if treatment is ordered.

#### Cost of Supervision.

*Intake Fee for Supervision of Offenders.* Both felony and misdemeanor offenders under DOC supervision must pay a supervision intake fee, which is considered payment toward the cost of establishing supervision. The fee is imposed after the offender is determined to be eligible for supervision.

For an offender whose crime was committed on or after October 1, 2011, the fee is \$400 to \$600 per judgment and sentence requiring supervision. For an offender whose crime was committed before October 1, 2011, the monthly supervision assessment is converted to a one-time fee. The fee is based on the monthly rate and the number of months of supervision left, but may not exceed \$600.

*Application for Interstate Transfer.* The DOC may charge a reasonable fee set by rule for processing an offender's application for out-of-state transfer of supervision under the Interstate Compact for Adult Offender Supervision. The fee is deposited in the Cost of Supervision Fund.

#### Indeterminate Sentence Review Board.

The ISRB is transferred and created within the DOC. The DOC must provide administrative and staff support for the ISRB and may employ a senior administrative officer and other personnel as may be necessary to carry out its duties.

All documents, reports, furniture, funds, contracts, and any other materials in possession of the ISRB must be delivered to the custody of the DOC. All employees of the ISRB are transferred to the jurisdiction of the DOC to perform their usual duties and without any loss of rights. If any question arises as to the transfer of such personnel or property, the Director of the Office Financial Management must make a determination as to the proper allocation.

Despite the ISRB's transfer to the DOC, all members of the ISRB must exercise independent judgment when making any decisions concerning offenders. The decisions include, but are not limited to, decisions concerning offenders' release, revocation, reinstatement, or the imposition of conditions of supervision.

#### Sentencing Guidelines Commission.

The SGC is created, located within the Office of Financial Management. It will advise the Governor and the Legislature as necessary on issues relating to adult and juvenile sentencing. As appropriate, the SGC must consult with the Criminal Justice Division in the Washington Attorney General's Office. The SGC must also establish and maintain a SOPB. The SOPB will advise the Governor and Legislature as necessary on issues relating to sex offender management. The SOPB will convene at such times as the Governor or the Legislature request.

The Council, instead of the SGC, must serve as a clearinghouse and information center on adult and juvenile sentencing. The DOC, instead of the SGC, must serve as the State Council for the Interstate Compact.

#### Caseload Forecast Council.

The courts and juvenile detention facilities must release to the Council all records needed for research and data-gathering purposes. The Council must develop and maintain a computerized database consisting of offender, offense history, and sentence information entered from the judgment and sentence forms for all felony offenses. On an annual basis, the Council must publish and maintain: (1) a statistical summary of adult felony sentencing and juvenile disposition; (2) an adult felony sentencing manual; and (3) a juvenile sentencing manual. The manuals are intended as a guide to assist practitioners in determining appropriate sentencing ranges. The Council is not liable for any errors or omissions in the manual, sentencing inappropriately calculated as a result of reliance on the manual, or for any other written or verbal information provided by the Council relating to sentencing.

The Council must appoint a research staff and sufficient resources to accomplish its duties.

#### Miscellaneous.

The section of SSB 5168 that provided that a felony sentence of one year or more must be served in state prison is repealed. Sentences for one year therefore will be served in jail.

By January 1, 2012, the DOC must recalculate the term of community custody for offenders currently in confinement or serving a term of community custody.

The act applies to persons convicted before, on, or after the effective date.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 through 9 and 42, relating to tolling and offender supervision (other than the cost of supervision), which contain an emergency clause and take effect immediately, and section 43, relating to SSB 5168, which contains an emergency clause that takes effect July 1, 2011.

**Staff Summary of Public Testimony:**

(In support) None.

(With concerns) The bill should be amended to reinstate 50 percent earned early release time.

(Available for questions) The DOC staff impacted by the bill will include administrative support, community corrections officers, and supervisors.

(Opposed) Eliminating tolling will reward offenders who violate their parole by not giving them more parole. The benefits of community custody include blocking criminality and connecting offenders with services, which reduces recidivism.

**Persons Testifying:** (With concerns) Garry Thrasher.

(Available for questions) Anna Aylward, Department of Corrections.

(Opposed) Matt Zuvich, Washington Federation of State Employees.

**Persons Signed In To Testify But Not Testifying:** None.